

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 1184

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO INFORMATION TECHNOLOGY; REQUIRING INFORMATION  
TECHNOLOGY PRODUCER RESPONSIBILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Consumer Information Technology Recycling Act".

Section 2. DEFINITIONS.--As used in the Consumer  
Information Technology Recycling Act:

A. "brand" means symbols, words or marks that  
identify a covered device rather than any of its components;

B. "collect" or "collection" means to collect a  
covered device, including by collection through a mail-back  
program, collection site or collection event;

C. "consumer" means any occupant of a single  
detached dwelling unit or a single unit of a multiple dwelling

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underscoring material = new  
[bracketed material] = delete

1 unit who has used a covered device primarily for personal or  
2 home business use;

3 D. "covered device" means a desktop or notebook  
4 computer or computer monitor; but does not include a  
5 television, including a cathode ray tube or flat-panel based  
6 television, a part of a motor vehicle, a personal digital  
7 assistant or a telephone;

8 E. "department" means the department of  
9 environment;

10 F. "manufacturer" means any person:

11 (1) who manufactures or manufactured covered  
12 devices under a brand that it owns or owned or is or was  
13 licensed to use, other than a license to manufacture covered  
14 devices for delivery exclusively to or at the order of the  
15 licensor;

16 (2) who sells or sold covered devices  
17 manufactured by others under a brand that the seller owns or  
18 owned or is or was licensed to use, other than a license to  
19 manufacture covered devices for delivery exclusively to or at  
20 the order of the licensor;

21 (3) who manufactures or manufactured covered  
22 devices without affixing a brand;

23 (4) who manufactures or manufactured covered  
24 devices to which it affixes or affixed a brand that it neither  
25 owns or owned nor is or was licensed to use; or

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1 (5) for whose account covered devices,  
2 manufactured outside the United States, are or were imported  
3 into the United States; but if another person has offered to  
4 collect such covered devices under a recovery plan pursuant to  
5 Subsection C of Section 4 of the Consumer Information  
6 Technology Recycling Act at the time the covered devices are  
7 imported into the United States, then this paragraph shall not  
8 apply;

9 G. "person" means any individual, business entity,  
10 partnership, limited liability company, corporation, nonprofit  
11 corporation, association, governmental entity, public benefit  
12 corporation or public authority;

13 H. "recover" means to reuse or recycle;

14 I. "recoverer" means a person or entity that reuses  
15 or recycles;

16 J. "retail sales" means sales of products through  
17 sales outlets, via the internet, mail order or any other means,  
18 whether or not the seller has a physical presence in this  
19 state. "Retail sales" includes sales of new, used, refurbished  
20 and other products;

21 K. "retailer" means a person that owns or operates  
22 a business that sells covered devices to a consumer, including  
23 through sales outlets, catalogs or the internet, whether or not  
24 the seller has a physical presence in this state;

25 L. "sell" or "sale" means any transfer for

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1 consideration of title, including, but not limited to,  
2 transactions conducted through sales outlets, catalogs or the  
3 internet or any other similar electronic means, but does not  
4 mean leases; and

5 M. "television" means any telecommunications system  
6 device that can receive moving pictures and sound, broadcast  
7 over a distance, and includes a television tuner. Display  
8 devices that are peripheral to a computer but nevertheless  
9 contain a television tuner are considered "televisions".

10 Section 3. APPLICABILITY.--The collection and recovery  
11 provisions of the Consumer Information Technology Recycling Act  
12 apply to covered devices used and returned by consumers in this  
13 state.

14 Section 4. MANUFACTURERS.--

15 A. No manufacturer shall sell or offer for sale a  
16 covered device in this state unless the manufacturer has  
17 adopted and is implementing a recovery plan.

18 B. No manufacturer shall sell or offer for sale any  
19 covered device in this state unless the covered device is  
20 labeled with the manufacturer's brand. The label shall be  
21 permanently affixed and readily visible.

22 C. No manufacturer shall sell or offer for sale any  
23 covered device in this state unless the manufacturer has a  
24 recovery plan under which the manufacturer offers to collect  
25 from a consumer and recover each covered device that is labeled

1 with the manufacturer's brand at no charge to the consumer.

2 D. The recovery plan shall offer covered device  
3 collection services that are reasonably convenient and  
4 available and designed to meet the collection needs of  
5 consumers in the state. The following is a nonexclusive list  
6 of systems that, alone or together, meet the convenience  
7 requirements of this section:

8 (1) the manufacturer or its designee offers a  
9 system in which the consumer can return an end-of-life covered  
10 device through the mail;

11 (2) the manufacturer or its designee keeps  
12 open and staffed physical collection sites; or

13 (3) the manufacturer or its designee holds  
14 collection events at which consumers may return end-of-life  
15 covered devices.

16 E. Collection services may use existing collection  
17 and consolidation infrastructure for handling covered devices  
18 and may include electronic recyclers and repair shops,  
19 recyclers of other commodities, reuse organizations, nonprofit  
20 corporations, retailers, recyclers or other suitable  
21 operations.

22 F. Manufacturers shall offer collection under their  
23 recovery plan at no charge to the consumer.

24 G. Each manufacturer shall, as part of its recovery  
25 plan, inform consumers in this state about where and how to

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1 return and recover covered devices. Each manufacturer shall  
2 include collection and recovery information on its web site,  
3 shall provide such information to the department and may also  
4 include such information in the covered device's packaging or  
5 accompanying the sale of the covered device. Inclusion on the  
6 state's web site is not a determination by the state that the  
7 manufacturer's recovery plan or actual recovery are in  
8 compliance with the Consumer Information Technology Recycling  
9 Act or other laws.

10 H. Each manufacturer shall annually report to the  
11 department on or before February 28, beginning the second  
12 program year, the weight of covered devices collected and  
13 recovered in this state during the previous calendar year. The  
14 report shall also include documentation verifying proper  
15 collection and recovery of such material compliant with the  
16 sound environmental management provisions under Section 8 of  
17 the Consumer Information Technology Recycling Act.

18 I. Manufacturers shall not be liable in any way for  
19 data or other information that a consumer may leave on a  
20 covered device that is collected or recovered.

21 J. Where more than one person is within the  
22 definition of "manufacturer" of a brand of a covered device  
23 under Subsection F of Section 2 of the Consumer Information  
24 Technology Recycling Act, any one or more such persons may  
25 assume responsibility for and satisfy the obligations of a

1 manufacturer under this section with respect to covered devices  
2 bearing that brand. In the event that no person assumes  
3 responsibility for and satisfies the obligations of a  
4 manufacturer under that act with respect to covered devices  
5 bearing that brand, the department may consider any one or more  
6 persons within such definition to be the manufacturer of that  
7 brand.

8 K. Nothing in this section is intended to exempt  
9 any person from liability the person would otherwise have under  
10 applicable law.

11 Section 5. RETAILERS.--

12 A. No retailer shall knowingly and willfully sell  
13 or offer for sale a covered device in this state unless the  
14 covered device has a proper manufacturer label and such  
15 device's manufacturer is included on the state list of  
16 manufacturers with recovery plans.

17 B. Retailers shall not be liable in any way for  
18 data or other information that a consumer may leave on a  
19 covered device that is collected or recovered.

20 Section 6. DEPARTMENT.--

21 A. The department shall educate consumers about  
22 collection and recovery of covered devices.

23 B. The department shall host, or designate another  
24 person to host, a web site about information technology  
25 recovery for consumers, with information about and links to

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1 manufacturers' collection and recovery information, including  
2 their recovery plans, and information about and links to  
3 information for covered devices, including information about  
4 collection events, collection sites and community recycling  
5 programs. Inclusion on the department's web site is not a  
6 determination by the state that the manufacturer's recovery  
7 plan or actual recovery is in compliance with the Consumer  
8 Information Technology Recycling Act or other laws.

9 C. The department and the attorney general, as  
10 appropriate, shall enforce the provisions of the Consumer  
11 Information Technology Recycling Act and take enforcement  
12 action against any manufacturer, retailer or recoverer for  
13 failure to comply with any provisions of that act.

14 D. A manufacturer that fails to label its new  
15 covered devices, or fails to adopt and implement a recovery  
16 plan as required by Section 4 of the Consumer Information  
17 Technology Recycling Act may be assessed a penalty of up to one  
18 thousand dollars (\$1,000) for the first violation and up to two  
19 thousand dollars (\$2,000) for the second and each subsequent  
20 violation. Except as otherwise provided in this subsection,  
21 any person who violates any requirement of this section may be  
22 assessed a penalty of up to five hundred dollars (\$500) for the  
23 first violation and up to one thousand dollars (\$1,000) for the  
24 second and each subsequent violation. Any violation of the  
25 sales prohibitions of that act may be enjoined in an action

1 brought by the attorney general. The department shall  
2 determine the appropriate penalties, as provided in this  
3 subsection, based on adverse impact to the environment, unfair  
4 competitive advantage and such other considerations as the  
5 department deems appropriate.

6 E. Financial or proprietary information submitted  
7 to the department under the Consumer Information Technology  
8 Recycling Act is exempt from public disclosure, in accordance  
9 with state law.

10 F. The department shall compile the information  
11 from manufacturers and issue a report to the legislature by  
12 April 1 each year, beginning the second program year.

13 G. The department may adopt such rules and  
14 regulations as are necessary to clarify the explicit  
15 requirements of the Consumer Information Technology Recycling  
16 Act. When promulgating such rules, the department shall  
17 consider:

18 (1) the impact of the rule on the public  
19 health and safety;

20 (2) the economic impact of the rule on the  
21 regulated community; and

22 (3) whether the rule promotes individual  
23 manufacturer responsibility.

24 H. The department shall not assess any fees,  
25 including an advanced recycling fee, registration fee or other

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1 fee, on consumers, manufacturers, retailers or recoverers for  
2 collection or recovery of covered devices.

3 Section 7. CONSUMERS.--

4 A. Consumers remain responsible for any data or  
5 other information that may be on a covered device that is  
6 collected or recovered.

7 B. Consumers are encouraged to learn about proper  
8 recovery of their end-of-life covered devices by visiting the  
9 department's and manufacturers' web sites.

10 Section 8. SOUND ENVIRONMENTAL MANAGEMENT.--All covered  
11 devices collected pursuant to the Consumer Information  
12 Technology Recycling Act shall be recovered in a manner that is  
13 in compliance with all applicable federal, state and local laws  
14 and requirements and with the institute of scrap recycling  
15 industries, incorporated, publication titled "Electronic  
16 Recycling Operating Practices".

17 Section 9. STATE PROCUREMENT--COMPLIANCE.--

18 A. Any person who submits a bid for a contract with  
19 a state agency for the purchase or lease of covered devices  
20 shall be in compliance with the Consumer Information Technology  
21 Recycling Act.

22 B. A state agency that purchases or leases covered  
23 devices shall require each prospective bidder to certify  
24 compliance with the Consumer Information Technology Recycling  
25 Act. Failure to provide such certification shall render the

1 prospective bidder ineligible to bid on the procurement of  
2 covered devices.

3 C. In considering bids for state contracts for  
4 covered devices, in addition to any other preferences provided  
5 elsewhere under state law, the state shall give special  
6 preference to manufacturers that have programs to recover other  
7 manufacturers' covered devices, including but not limited to  
8 collection events, recycling grants and manufacturer  
9 initiatives to take back any covered device brand with  
10 purchase.

11 D. The general services department shall adopt  
12 rules to implement this section.

13 Section 10. FEDERAL PREEMPTION.--The Consumer Information  
14 Technology Recycling Act shall be deemed repealed if a federal  
15 law or a combination of federal laws takes effect that  
16 establishes a national program for the collection and recycling  
17 of covered devices that substantially meets the intent of that  
18 act.

19 Section 11. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is January 1, 2008.